

November 6, 2001

The Honorable John Ashcroft
Attorney General of the United States
U.S. Department of Justice
10th Street and Constitution Avenue, NW
Washington, D.C. 20530

Dear Mr. Attorney General:

I am writing to express my very serious concerns regarding reports of political influence and impropriety by Justice Department employees in the proposed settlement of the *U.S. v. Microsoft* case. I am also deeply troubled by your office's continuing failure to respond to my earlier requests for information set forth in my September 6, 2001 letter to you.

As I am sure you are aware, a number of reservations have been raised with the proposed settlement by consumer groups, trade associations, state attorneys general, and antitrust experts. I too am very concerned the proposed agreement represents a weakening in our government's resolve to protect competition, preserve consumer welfare, and foster continued innovation, particularly given the resounding and clear cut legal judgments achieved by your predecessor in office. Wherever one comes out on the merits or demerits of the proposed settlement, I do not believe the Department is at all served by continuing to stonewall inquiries into legitimate and credible allegations of political impropriety raised by the press and the public. I would therefore encourage your office to respond to my earlier letter and the additional questions raised in this correspondence by no later than November 23, 2001.

At the outset, let me note that my earlier expressed concerns about inappropriate political influence have only been heightened by recent media reports that your own Chief of Staff, David Israelite, communicated with outside lobbyists in an effort to convince them to alter their clients' views regarding the role of the states in the case. This inappropriate and possibly illegal contact is reported to have occurred after Mr. Israelite had recused himself from the case because of conflict of interest concerns. As a result, I would like to receive an itemization of any and all contacts between Mr. Israelite and any representatives of any outside party (including representatives of AOL/Time Warner) having any interest in the Microsoft case, as well as a detailing of any briefings or other "communications" (meant to include all notes, e-mails, documents, memoranda, phone records and any other types of written, audio, or electronic communications) involving the Microsoft case which are in any way associated with, written to or sent from Mr. Israelite. If the allegations reported by the media are true, such active involvement by a recused public official could violate federal conflict of interest laws governing Executive Branch employees.¹ Among other things, Mr. Israelite would be disqualified from taking any significant action if the matter will have a "direct and predictable" effect on his interest.

¹See 18 U.S.C. § 208(a); 5 C.F.R. § 2635.401-403. See also, Ethical Rules for U.S. Attorneys, Sections 3-2.170-171, 3-2.220.

In a similar regard, I am troubled by the possibility that additional staff who have been recused from the Microsoft case have been and will continue to be called on to offer services and judgments which implicate the case. For example, it has been reported that Mr. William J. Kolasky, who has previously written *amicus curiae* legal briefs supporting Microsoft's legal position and opposing the Department has been appointed to be Deputy Assistant Attorney General for International Affairs. Given that one of his principal responsibilities will be dealing with the European Union, which is itself in the midst of a significant antitrust proceeding involving Microsoft, it would seem difficult, if not impossible for him to discharge his duties without in some way taking an action impacting Microsoft. Of course we can only consider and scrutinize these conflicts if we learn of the persons in the Department who have recused themselves. This is why I am so troubled that your office has refused to turn over a list of political appointees at the Department who have recused themselves from the Microsoft case.

Third, the press has also reported that many career attorneys and staff at the Department were either cut out of the final negotiations or raised objections to it that were overruled. As a result, I would also like to receive copies of any and all "communications" (as defined above), by any Department employees or consultants regarding a possible settlement or proposing any suggestions or differing terms than those you agreed to. I am also concerned that political appointees within the Department may have threatened career employees for failing to "toe the company line" in this matter and support the settlement. As a result, I would also like to receive copies of all "communications" between any political appointees and career staff regarding the Microsoft case which could in any way be seen as threatening or intimidating. Given the thousands upon thousands of hours devoted by career staff at the Department, I believe it is counterproductive to totally subordinate their considerable efforts and input at this critical stage in the proceeding. Surely, public disclosure of these matters will contribute to the public's knowledge and understanding of this matter.

Thank you for your time and attention to this matter.

Sincerely,

John Conyers, Jr.
Ranking Member

cc: Hon. F. James Sensenbrenner, Jr.
Mr. Daniel Bryant